IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2293 OF 1986
WITH
FIRST APPEAL NO.767 OF 1988

Kamlakar B. Rane .. Petitioner
Versus
Authorised Chief Settlement
Commissioner and Ors. .. Respondents

Mr.R.S.Apte for petitioner
Mr.C.R.Sonawane,A.G.P. for respondent Nos. 1 to 4 and 6 and 7. in W.P. and Mr.G.P.Mulekar, A.G.P. in F.A.
Mr.Suresh Kumar with S.D.Bhosale for respondent No.8 Union of India
Mr.Zaiwala i/b. M/s.Bilawala & Co. for respondent No.5

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 22nd DECEMBER 2004.

ORAL JUDGEMENT (Per S.C.Dharmadhikari, J)

. The writ petition under Article 226 of the Constitution of India is directed against the order in Revision Petition No.4 of 1980 with Misc.Petition Petition No.1 of 1980 passed by Authorised Chief Settlement Commissioner, Maharashtra State Bombay (Exh.A), a sale certificate dated 24th March 1982 issued by the Settlement Commissioner for compensation to properties-cum-custodian of Evacue property Maharashtra State and order in Application No.1 of

1982 passed by Secretary to Government of Maharashtra, Revenue and Forest Department dated 15th November 1985. These proceedings are under Administration of Evacue Property Act, 1950 (for short E.P.Act and Displaced Persons (Compensation and Rehabilitation) Act, 1954 (for short D.P.Act).

2. The writ petition was directed to be heard along with the First Appeal because the first appeal arises out of a judgement and decree in Special Civil Suit No.37 of 1980 filed by respondent No.5 in the Writ Petition against the petitioner and others. That suit is decreed by judgement and order dated 4th Februatry 1988. Petitioner in the writ petition being original defendant No. 10 in the special civil suit challenges judgement and decree in the same by which he is directed to deliver vacant and peaceful possesion of the portions occupied by out of the suit properties to the plaintiffs viz., respondent No.5 in the writ petition.

3. At the outset, learned Counsel appearing for parties addressed us mainly on the grounds raised in the petition. Although, we were taken through the materials placed before the trial court, it is agreed that the issues arising for

consideration in the Writ Petition and suit are common. Our order in the writ petition will, therefore, decide the outcome of the first appeal as well.

4. In so far as lands under consideration are concerned, they are situated at Pach Pakhadi, Thane bearing S.Nos.34/1, 35/1 and 35/3. One Haji Mohammed Juma and his son Haji Ali Mohammed Juma were admittedly the owners of the lands in question. They migrated to Pakistan for good. There upon, requisite notices under section 7(1) of E.P. Act were issued against them to show cause as to why they should not be declared as evacuees. The authority specified under the E.P. Act and Rules issued and served the requisite notices. The noticees (Haji Mohammed Juma and Haji Ali Mohd.Juma) did not respond despite service and by an order dated 2nd February 1959 they were declared evacuees. The property was also declared as a evacuee property.

5. The question for consideration in this matter is whether petitioner claiming to be tenant in respect of this property through the owners has proved his claim that his predecessor in title was inducted in this capacity before the relevant date

(14th August 1947). It is the case of the petitioner that this fact is substantiated by firstly mutation entry showing the predecessor in title of the petitioner as tenant and secondly by a decree passed in Suit No.73 of 1948 by the Civil Judge, Senior Division, Thane. The said suit was filed by the owners against the predecessor in title of the petitioner claiming a declaration that predecessor in title of petitioner and one more person (Bai Chandrabai) are tresspassers. The judgement and decree rejected this claim of the owners and it was held that the predecessor in title of petitioner were wrongfully cultivating the lands. According to petitioner, it was held that they were tenants under the Bombay Agriculture and Lands Act, 1948. Thus, they are protected by law. The authorities exercising powers under the E.P. and D.P. Act have rejected this claim of petitioner and that is how he is before us.

6. It is pertinent to note that the above facts alone would not assist in deciding the issue in this petition. We will have to take note of some other developments as well. Once the necessary declaration and notification was issued, the land vested in the Collector cum Custodian of

Evacuee Property, Thane and in the Union of India. It appears that Regional Settlement Commissioner, Bombay held an auction on 15th June 1964 for the sale of said lands. At the said auction, respondent No.5's bid was highest and came to be accepted. Bid was for Rs.1,25,000/-. Respondent No.5 paid Rs.25,000/- in cash on the same day and obtained a receipt in that behalf. Thereafter, Regional Settlement Commissioner by his letter dated 27th June 1964 communicated the acceptance of the offer. Subsequently, the payment of Rs.1 lakh was made by the successful bidders. It appears that suits were filed against successful bidders being Special Civil Suit No.1 of 1968, 2/68 and 3/68. These suits were filed by the heirs of the owner- landlord in the Court of Civil Judge, Senior Division, Thane wherein evacuee nature of property was challenged. The controversy in the three suits being identical they were decided by a common judgement. All these suits were dismissed on 8th January 1968. An appeal was preferred against the said decision in this Court and the same was dismissed on 14th September 1977.

7. It appears that during the pendency of the First Appeal No.441 of 1969, an officer from

the Regional Settlement Commissioner wrongfully allotted some portion of the said land to one Rukibai Santadas (represented by her constituted attorney Chamanlal Saigal). Respondent No.5 made representations to the Central Government and the Regional Settlement Commissioner acting in pursuance thereof cancelled the allotment by an order dated 13th September 1971. The Regional Settlement Commissioner also directed the officers as well as the said constituted attorney to hand over possession of the said lands to the successful bidder/ auction purchaser (respondent No.5).

8. It is pertinent to note that during these events, petitioner was conspicuous by his absence.

9. A revision petition was filed by Rukibai Santdas before the authorised Chief Settlement Commissioner which was eventually rejected on 27th March 1981. Prior thereto, Rukibai applied for allotment of the land to her but she did not succeed as her request was turned down by Central Government in Revision Application under section 33 of D.P. Act vide order dated 17th May 1974. Thereafter, Rukibai filed another revision application (Revision Application No.1 of 1979)

under section 24 of the D.P. Act before respondent No.1 to the present writ petition.

10. It is during the course of hearing of this revision petition, that an application was made by petitioner herein for his impleadment. Request of petitioner to implead him as party to the revision application preferred by Rukibai, was rejected vide order dated 24th October 1980. Against the order passed by Chief Settlement Commissioner, petitioner filed further revision before Government which was also rejected on 26th January 1981. In this order, petitioner was asked to approach authorised Chief Settlement Commissioner for necessary reliefs. By this time, petitioner had also filed a Misc. application before the authorised Chief Settlement Commissioner. However, by way of abundant caution he filed substantive revision application before the said authority. The revision petition and misc. application were disposed of by the authorised Chief Settlement Commissioner by a common order dated 31st October 1981.

11. Aggrieved by the order dated 31st October 1981, a revision application was filed under section 33 of the D.P. Act by petitioner before

the appropriate authority i.e. Secretary to Government of Maharashtra, Revenue and Forest Department. By an order dated 15th November 1985, the revision application was rejected and the Secretary confirmed the order of the Chief Settlement Commissioner dated 31st October 1981. As stated above, aggrieved and dissatisfied with this order the petitioner has approached this Court invoking its jurisdiction under Articles 226 and 227 of the constitution of India.

12. One more important event is institution of Suit No.37 of 1980 in the court of Civil Judge, Senior Division Thane by respondent No.5 auction purchaser. He filed this suit for specific performance of contracts dated 15th June 1964 and 27th June 1964 executed by the State of Maharashtra, Settlement Commissioner and Collector, Thane. This suit was filed because despite being the successful bidder at the auction, respondent No.5 was not issued sale certificate in respect of the said lands. Similarly, vacant possession was not handed over to him by the aforesaid authorities by removing all encroachers who were impleaded as parties to the suit. It is pertinent to note that both Rukibai as well as present petitioner were arrayed

as parties to the suit as defendant Nos. 4 and 10 respectively. Respondent No.5 also applied for interim reliefs in the suit by making an application for appointment of court receiver. It appears that the application made on 7th March 1980 for appointment of court receiver with power to take possession of the said lands together with structures standing thereon and handing over them to respondent No.5 as agent, was rejected by the trial court on 3rd May 1980. Against this order of the trial court dismissing the application, respondent No.5 preferred an Appeal from Order being A.O. No.221 of 1980 in this Court. A civil application was also taken out therein being C.A. No.1569 of 1980. This Court allowed the A.O. and appointed Court Receiver, High Court, Bombay as receiver of the said lands with structures. This order was passed on 22nd July 1980. It appears that the receiver was directed to take possession of the lands forthwith and to collect compensation from all persons in actual possession as on the date of the said order. We have noted this order because although the petitioner claims to be in possession of the suit properties, it appears that he has specifically stated before the court below as well as before the authorities that he is in possession of only 2000 sq.yds. of land from

S.No.35/3(part) which was shown in a map annexed to the written statement in the trial court.

13. After institution of this suit, summonses were served on all parties. Petitioner (defendant No.10 therein), entered his appearance and filed a written statement in the said suit on 26th November 1982. He also filed an additional written statement on 7th December 1982. At this stage itself, it is worthwhile noting contents of paras 24 and 25 of the first written statement and para 4 of the additional written statement. They read thus:-

"24. This defendant submits that survey No.34/I P; 35/1 P and 35/3 P of Panchpakhadi which were paddy lands were leased out to Baji Kanhoji Rane some time in 1939. There were also mango trees in these lands. This defendant is the son of Baji Kanhoji. Baji continued to be in possession of all these lands interruptedly till 1963; when he died. After his death, his widow, i.e. mother of this defendant Chandrabhaga, continued to be in possession of the said lands. After her death in 1970, this defendant came in possession of these lands. Father of this defendant paid lease money to the original owners and thereafter the lease money was collected from this defendant by the custodian. Survey No.35/1 P was acquired for construction of National Highway. Therefore, this defendant shifted his residence to Survey No.35/3 P. Due to encroachments committed by other persons, this defendant is in possession of 2,000 sq.yds. of land only out of survey No.35/3 P which is shown in the map annexed with the written statement. Out of this, some portion is leased out to the defendant No.7. This defendant has also paid land revenue all these

years. This defendant says that the title on the basis of tenancy, which this defendant is claiming is in respect of the entire suit lands. However, this defendant is restricting his claim in this suit to land admeasuring 2,000 sq.yds. in his possession in view of the undertaking given to the Hon'ble High Court in appeal from Order No.221 of 1980.

25. In view of these facts, this defendant submits that rights acquired by deceased Baji Kanhoji under the provisions of the Bombay Tenancy Act, 1939, ripened into protected tenancy under the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948. The right being heritable this defendant also continues to be a protected tenant, in respect of land in his possession, i.e. 2000 sq.yds out of survey No.35/3. The acquisition of this land by Government does not make any dent on the right of this defendant and if the plaintiffs have purchased this land, it would be subject to the right of tenancy of this defendant. The plaintiffs are not entitled to claim possession of the land that is with this defendant except in accordance with the tenancy law.

4. With reference to the amended para 16(D): It is denied that this defendant has made any encroachment. The passing of the injunction order is not disputed and the averments which are matter of record are not disputed. Thus defendant claims that he is in possession of 2,000 sq.Mtrs. of land from survey No.35/3. The plaintiffs should give specifications of the encroachment alleged to have been made by this defendant. The plaintiffs cannot claim any account from this defendant. The plaintiffs could have straight away asked for damages. The claim for account as laid is not tenable."

It is also worthwhile noting that apart from cross Examining the witnesses examined by the auction purchaser (respondent No.5), the petitioner examined himself. His deposition was recorded on 16th October 1987. He was extensively cross

examined by respondent No.5 (auction purchaser's advocate) on 15th December 1987. We shall refer to this deposition a little later. The trial court consistent with pleadings framed necessary issues in the suit and insofar as petitioner is concerned, the trial court framed issue No.10 as under:-

> "10. Does defendant No.10 prove that he is in possession of 2000 sq.yds. land out of the suit land as a tenant since before the auction sale and as such he is not liable to be evicted except the provisions of tenancy laws?"

14. After giving full opportunity to the petitioner and other defendants, the trial court has decreed the suit by its judgement and order dated 4th February 1988. The present petitioner was directed to hand over vacant and peaceful possession of the portion occupied by him out of the suit properties. The Court consistent with the directions hereinabove, ordered enquiry into mesne profits. However it directed that insofar as taking physical possession of the property is concerned, since Receiver is appointed by this court, parties should move this court for necessary directions to the court receiver to place them in physical possession.

15. Aggrieved and dissatisfied with this judgement and decree, first appeal is filed by the petitioner (original defendant No.10), under section 96 of the C.P.C. 1908. This Court admitted the first appeal and directed the first appeal to be heard along with the writ petition.

16. Mr.Apte, learned Counsel appearing for petitioner contended that the authorities exercising power under the E.P. Act as well as D.P. Act were wrong in their conclusion inasmuch as a protected tenant, whose rights have been recognised by a competent court, cannot be ousted from the properties in question. He submits that a grave and fundamental error apparent on the face of the record is committed by the authorities while directing issuance of sale certificate in favour of respondent No.5 in respect of these properties by divesting the petitioner of his rights as protected tenant. He submits that the lands are agricultural lands. He submits that Bombay Tenancy Act 1948 applies to the same. He submits that the said enactment recognises concept of tillers day i.e. 1st April 1957. All tenants who are in possession of the lands in that capacity have become lawful owners of the lands

cultivated by them. He submits that this is a welfare and beneficial piece of legislation. He submits that petitioner was admittedly in possession of the properties. He submits that sections 8 and 12 of the E.P. Act expressly recognise rights of tenants before the relevant date. He submits that the relevant date in this case is 14th August 1947 and admittedly, the predecessors in title of petitioner are tenants from 25th May 1939. Therefore, the vesting contemplated by the E.P. Act is not de hors the right of parties like petitioner. In other words, vesting is subject to such rights. Admittedly, right as tenants subsists. Further, rent demanded by custodian has been duly paid. Inviting our attention to the provisions of the E.P. Act as well as the D.P. Act viz., sections 8, 12 and 19 and the object and purpose of both enactments, Mr.Apte submits that vesting free of encumbrances contemplated therein would not take within its import, divesting of rights of tenants but it would be subject to such rights. He invites our attention to certain circulars which give a preferential right to parties like petitioner while disposing of evacuee property. In any event, submits Mr.Apte, that the sale is not valid. The consideration is paid after due date.

No extension has been granted. The authorities exercising powers under the D.P. Act have not issued any notice to the petitioner calling upon him to deliver possession and rightly. This is because they also proceeded on the basis that the sale in favour of respondent No.5 is not valid.

17. In support of these submission Mr.Apte places strong reliance upon decision of Supreme Court in the case of Bhanwarlal & Anr. Vs. Regional Settlement Commissioner, Jaipur reported in A.I.R. 1965 S.C. 1885 & A.I.R. 1967 S.C. 106.. Mr.Apte also places reliance upon a decision of Madras High Court reported in A.I.R. 1964 Madras 209. He also places reliance upon a decision of the Supreme Court in the case of Tar Mohammed Vs. Union of India, reported in 1997 S.C.C. 382. Mr.Apte submits that a decision rendered by Division Bench of this Court reported in 1977 Mh.L.J. 433 does not lay down the correct law. He submits that this decision requires re-consideration and it is immaterial whether the same has been followed subsequently. He submits that the decision did not take into account the fundamental and basic principle viz., that it is only the evacuee property which can be made subject matter of proceedings under the Act.

Consequently, only evacuees rights therein are touched and vest ultimately in the authorities. The right, title and interest of non evacuees remains untouched and uninterfered. Once this aspect is noted then, the law laid down in the Division Bench decision is erroneous and requires re-consideration. The matter, therefore, be placed before a larger bench in the event this Court does not agree with the same is the ultimate submission of Mr.Apte.

18. On the other hand, Mr. Zaiwala, learned Senior Counsel appearing for respondent No.5 contended that the petition as well as the first appeal is untenable and liable to be dismissed. He submits that on facts, findings have been rendered by the authorised Chief Settlement Commissioner as well as Secretary to the effect that petitioner was not in possession of the lands in question at the relevant time. There is no evidence to demonstrate that petitioner or his predecessor in title were in possession of the lands in question as tenants and, therefore, their rights need to be protected. He submits that findings of fact recorded by authorities based upon materials produced before them are not liable to be interfered in writ jurisdiction of this

Court. He submits that finding of fact are binding upon this Court. More so, when they are not demonstrated to be vitiated by any error apparent on the face of record nor can they be termed as perverse. He submits that while deciding the writ petition, this Court is not sitting in appeal over the findings of fact rendered by the authorities under the E.P. Act and D.P. Act. Therefore, he submits that petition is liable to be dismissed. Mr.Zaiwala invites our attention to a further aspect viz., that the petitioner has not addressed us on factual matrix in this case and advisedly so. Mr.Zaiwala submits that from the pleadings, in the trial court as well as deposition of the petitioner it is clear that at no time was it the case of petitioner that he is in possession of the entire land. He submits that possession was claimed only in respect of 2000 sq.yds. pertaining to S.No.35/3 (P). In so far as this land is concerned no proof of whatsoever nature of tenancy rights was placed by petitioner, although, burden rested upon him completely. On the other hand, in the written statement itself, the petitioner has raised contradictory and inconsistent pleas. If the petitioner was really in possession of the entire lands or the land to

the extent indicated above, nothing stopped him from objecting to the sale. He submits that the petitioner did not object to the sale of properties in 1964 and till 1980. He woke up only when Rukibai's revision application was being considered. He submits that the pleas raised by the petitioner lack bonafides and it is nothing but an attempt to harass the auction purchaser some how or the other by putting obstacles in the way of the authorities as well respondent No.5. He has taken us through the plaint, written statement of petitioner, his deposition and the findings of the trial court and thereafter contended that these findings also are not vitiated in any manner. He submits that the court below has rightly decreed the suit instituted by respondent No.5.

19. Mr.Zaiwala has vehemently contended that the judgement of the Division Bench of this Court has been consistently followed and there is nothing in the Supreme Court decisions which counter to the same. Consequently, there is no need for any reference to the larger bench. That apart, he submits that once the petitioner was not in possession before relevant date, then there is no question of examining his plea of protection.

Therefore, on facts this is not a fit case for interference by us. Consequently, both the writ petition and the first appeal be dismissed.

20. We have carefully and anxiously considered the rival contentions. With the assistance of learned Counsel appearing for parties, we have gone through the relevant statutory provisions and the decisions brought to our notice. We have also gone through the pleadings and evidence pertaining to petitioner in detail.

21. In our view, it is not necessary to decide any larger question much less whether judgements rendered by Division Bench of this Court require re-consideration or not. We are satisfied that this is not a fit case for interference in writ jurisdiction. Once the findings of fact of the authorities are binding upon us, then there is no need to interfere in exercise of our extra ordinary and discretionary as well as equitable jurisdiction under Article 226 of the Constitution of India. These findings are basis of the decree of the trial court. It is clear that the civil court could not have, in any manner, sat in judgement over the findings of the

authority, once they were demonstrated to be in consonance with the materials placed before them. That apart, the Trial Court has independently assessed and appreciated the oral and deocumentary evidence while upholding respondent No.5's claim to the properties in question. Therefore, both the writ petition and First appeal are liable to be dismissed. Once we reach this conclusion on facts, it is not necessary to refer to the statutory provisions and the decisions brought to our notice.

22. It is pertinent to note that before the authorised Chief Settlement Commissioner, the petitioner contended that in or about May 1939 lands in question were leased out to his predecessors in title by the owners for purpose of cultivation on an annual rent of Rs.150/-. It is his case that his father expired in the year 1963. Thereafter his mother also died. Necessary mutation entry was effected in the village record indicating petitioner as tenant of these lands. Thereafter, reliance is placed on the decree in Special Suit No.73 of 1943 filed by one of the owners against the petitioner's predecessor, claiming that they are tresspassers. It is contended by the petitioner that once this suit

was dismissed on the basis that petitioners' predecessors were held to be lawfully cultivating the land, there is no further proof of his rights as tenant necessary. It is on this basis that right, title and interest in the lands in question was claimed and it was contended that at the time of sale i.e. 15th June 1964 petitioners were in possession of the lands in question as tenants and they were entitled to be protected. An auction sale depriving them of protection in the lands is thus a nullity and liable to be set aside.

23. Authorised Chief Settlement Commissioner has while examining this contention observed that petitioner's submission has many loose ends which cannot be tied together. The authorities specifically refer to the fact that petitioner in the civil suit filed by respondent No.5 against him contends that he is a tenant in a part of the suit property. Thus, the claim to be in possession of all three survey numbers as a tenant is devoid of any merit. The authority has, therefore, referred to the pleadings in the plaint in Special Civil Suit No.37 of 1980. The authorities rightly concluded that at a certain point of time, petitioner lost possession either of a part or the whole property. Petitioner has

maintained complete silence about the time of his being in possession or losing it. These facts are vital on which complete silence was maintained by the petitioner before the authorities. The authorities have rightly noted that the exact date on which evacuee migrated to Pakistan is nowhere on record. Onus of proving exact date of migration was on the petitioner. It was thereafter observed that a plea that when the property was sold by public auction and purchased by respondent No.5, petitioner was totally unaware of the same was not canvassed. Surely, if the petitioner had been in possession, he would have said that the auction sale adversely affected his rights.

24. Another relevant aspect of the matter is that petitioner's conduct when the land in question was allotted to constituted attorney of Rukibai on 6th August 1971. The petitioner was not in picture at all. Petitioner was unaware of the fact that Assistant Settlement Commissioner, in pursuance of an order of allotment in favour of Rukibai, delivered possession to the constituted attorney. If the petitioner had been in possession of the property, he would have definitely obstructed and objected to being

deprived of the same by the constituted attorney and the authorities. As observed above, once, the constituted attorney of Rukibai lost right in respect of said lands because of withdrawal/ revocation of the order of allotment and when he filed revision application challenging the same that the petitioner suddenly woke up. The authorities therefore, rightly observed that petitioner was not in possession of the subject properties. Once the petitioner could not demonstrate that he was in possession at the relevant time or even at the time of auction sale, then there is no question of protecting his rights. The report of Court Receiver is also relied upon by the authorities.

25. Before, the State Government, selfsame contentions were raised by petitioner and in addition, it was contended that the sale is bad because of general policy of Government and in any event, because of irregularities in the conduct of auction. The Secretary in the impugned order has pointed out the inconsistencies in the submissions and averments made on behalf of petitioner. He has pointed out and in our opinion rightly, that when the suit land was declared as evacuee property, petitioner’s predecessor in title did

not object to the same. When the property was put up for auction on 15th June 1964 and the highest bid was accepted on 4th June 1965, once again no objection was raised. Therefore, it is difficult to accept the contention of petitioner that he was ignorant of the proceedings for 30 years i.e. between the declaration of properties as evacuee property and the revision application /miscellaneous application preferred in the year 1980. The conduct of petitioner in impleading himself in Rukibai's revision application is worth noticing. Rukibai approached the authorities in 1980.

26. In his deposition in the trial court in special civil suit No.37 of 1980, petitioner once again talks of only 2000 sq.yds. In his cross examination at para 8, petitioner could not even mention the area of S.No.34/1 and S.No.35/3. On the other hand, it appears that petitioner had a small structure. Thereafter, he extended his encroachment further by constructing chawl and that fact is admitted by him, inasmuch as it is stated that the W.C. in the chawl was constructed after court receiver was appointed. A suggestion was made to him that chawl was constructed some time in 1970-72. Cross examination of petitioner

centres around his possession of suit property. Once, it is clear from the written statement that the petitioner could not substantiate the plea of tenancy over the entire land but restricted his claim to only 2000 sq.yds. which also is not proved, then, we cannot hold that the petitioner was in any manner protected.

27. In the light of the factual material before the authorities as well as before the trial court, we are of the view that they were in no error in holding that the petitioner has no right, title and interest in the property in question and he is bound and liable to deliver possession thereof to respondent No.5. The authorities as well as the trial court have gone into the materials placed before them meticulously and have given full opportunity to petitioner to make good the case set up by him. The petitioner having miserably failed to substantiate his pleas before them, we cannot now accept the case of tenancy in respect of entire property. It is clear to us that petitioner having encroached upon the property and extended his structure is squatting on the same for financial gains and only with a view to obstruct handing over possession by the authorities to the rightful claimants. Petitioner

having not objected to the auction sale and allotment of the land to Rukibai goes a long way to show that he was not in possession much less as a tenant cultivating the land. The writ petition is, therefore, dismissed.

28. As a result of the foregoing discussion, we are of the view that the judgement and order of the trial court in Suit No.37 of 1980 is valid, legal and proper and does not require interference in our Appellate jurisdiction. The trial court has not committed any perversity while appraising the materials placed on record and passing a decree in favour of respondent No.5 after holding that petitioner has no right, title and interest in the said land. It is decided in the light of the pleadings of parties. Further the evidence oral as well as documentary has been appraised and assessed by the trial court judiciously. The First Appeal is liable to be dismissed. Once the finding of authorities is maintained then the judgement and decree of trial court cannot be interfered with. The First appeal also, therefore, stands dismissed with no orders as to cost.

29. At the request of Mr.R.S.Apte, learned

Counsel for petitioner, interim orders passed in Writ Petition No.2293 of 1986 and First Appeal No.767 of 1988 to continue for a period of four weeks from today. C.C. expedited.

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